



THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Steven J. Wygant) Group: 3641
Serial No.: 10/789,078)
Filed: February 27, 2004) Examiner: T. Chambers
Title: PNEUMATIC SHOOTING DEVICE)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed concurrently with a Notice of Appeal from the Examiner's decision dated March 15, 2006, finally rejecting Claims 1-15, 17, 18 and 20-22.

Claims 1-15, 17, 18 and 20-22 are pending. Claims 16, 19 and 23 have been canceled. Claims 1-15, 17, 18 and 20-22 are rejected. Claims 1-5, 7-9 and 12-22 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,769,066 (Schneider). Claim 6 is rejected under 35 U.S.C. § 103(a) as being obvious by U.S. Patent No. 5,769,066 (Schneider) in view of U.S. Patent Application Publication No. 2004/0200466 (Salva). Claims 10, 11 and 15 are rejected under 35 U.S.C. § 103(a) as being obvious by U.S. Patent No. 5,769,066 (Schneider). The panel of Examiners is requested to review the legal and factual basis of the rejections for the reasons stated below.

Anticipation Rejection Under Schneider '066 Is Inept.

It is respectfully submitted that Schneider '066 discloses air control housing assembly 10 (Figs. 6 and 22) which includes a housing 12 having a substantially cylindrical bore 102 (column 3, lines 20-26). Air control sleeve 16 includes a cylindrical longitudinal bore 21 therethrough and radially extending evenly spaced ports 18 (column 3, lines 56-60). A stationary air piston sleeve 32 (Figs. 1, 16, 17 and Figs. 22-24) includes a cylindrical bore 37 formed therethrough and an o-ring groove 35 (column 4, lines 5-8). At the instant of firing (Fig. 23), air reservoir 109

which has previously been charged with pressurized gas equal in pressure to that of line pressure entering into inlet 104 is vented into radial vents 26 of the air control spool 20 which momentarily align with the radial vents 18 of the air control spool 16, and in this position, the longitudinal bore 21 being previously sealed, receives the entire accumulated gas charge within gas reservoir 109, along with the pressurized gas available at inlet 104 from the pressurized gas source (column 5, lines 44-57). This entire pressurized gas charge is forced against the ball projectile B1 to propel it from barrel 72 (column 5, lines 58-59).

In contrast, Claim 1 as amended recites in part: “an action including a housing defining a pressure reservoir with a discharge outlet connected to and approximately collinear with said barrel ...”. (Emphasis added). Applicant submits that such an invention is neither taught, disclosed or suggested by Schneider ‘066, or any of the other cited references, alone or in combination, and includes distinct advantages thereover.

Schneider ‘066 disclose radial vents of the air control spool which momentarily align with the radial vents of another air control spool, and in this position, the longitudinal bore receives the entire accumulated gas charge within gas reservoir. **The circuitous route of the radial vents, is simply not the structure claimed by the present invention, and while sufficient for a paintball application as shown in Schneider ‘066, provide resistance to gas flow and therefore restrict gas flow, and cannot be used in the present invention as there would not be sufficient impacting gas flow to propel a relatively large projectile as is disclosed in the present invention.** Schneider ‘066, and the other cited references, fail to disclose or suggest an action including a housing defining a pressure reservoir with a discharge outlet approximately collinear with the barrel. With a discharge outlet approximately collinear with the barrel, and the relatively large size of the discharge outlet, the present invention can exhaust the pressure reservoir nearly instantaneously to propel the large projectile, without incurring the resistance to flow and resultant energy losses of the radial vents of Schneider ‘066.

Further, the Examiner has arbitrarily indicated that Schneider ‘066 includes a discharge outlet which is in fact the barrel opening, and thereby has ignored the limitation of “a pressure reservoir with a discharge outlet approximately collinear with said barrel”. A “reservoir” is commonly understood to be a receptacle or chamber for storing a fluid (*The American Heritage Dictionary of the English Language*, Houghton Mifflin, 1978). The barrel of Schneider ‘066 never stores a fluid, and therefore, is never a reservoir. Therefore, Schneider

‘066 fails to disclose or suggest a pressure reservoir with a discharge outlet approximately collinear with the barrel

Claim 1 further recites: “a linear bearing body coupled with said housing, and a piston having a discharge end, said piston being slidably movable within said linear bearing body to selectively open and close said discharge outlet.”. **In contrast, the barrel opening of Schneider ‘066 constantly remains open**, and a discharge occurs when the radial vents of the control spools are aligned.

In order to anticipate a claim, the elements of the reference must be arranged as required by the claim (MPEP 2131), **and the elements of Schneider ‘066 are not arranged as claimed by the present invention**; therefore Schneider ‘066 does not anticipate the present invention. Additionally, to anticipate a claim, the reference must teach every element of the claim (MPEP 2131), and as at least the claim limitations discussed above are not taught by Schneider ‘066, Schneider ‘066 does not anticipate the present invention

An advantage to the present invention is that the discharge outlet approximately collinear with the barrel can discharge a large amount of high pressure air quickly to propel a large projectile.

Similarly, Claim 21 as amended recites in part: “An action for use in a pneumatic shooting device which has a barrel, said action comprising: a housing defining a pressure reservoir with a discharge outlet configured to be approximately collinear with the barrel ...”. (Emphasis added). For all of the reasons given above with regard to Claim 1, Applicant submits that Claim 21, and Claim 22 depending therefrom, are now in condition for allowance, which is hereby respectfully requested.

Obviousness Rejection Under Schneider ‘066 In View Of Salva ‘466 Is Inept.

Applicant respectfully submits that Claim 6 depends from Claim 1 which is distinguished from the prior art, including Schneider ‘066 and Salva ‘466, as discussed above. Therefore, any dependent claim, including Claim 6, is distinguished from the prior art. Further, the present invention is not obvious by Schneider ‘066 and/or Salva ‘466, as there is no suggestion in either of Schneider ‘066 and/or Salva ‘466 to modify and/or combine the references to create the Claim 1 structure of the present invention, and both Schneider ‘066 and Salva ‘466 fail to teach or suggest the structure of Claim 1; therefore the Examiner has failed to make a *prima facie* case of

obviousness (MPEP 2142). For all of the foregoing reasons, Applicant submits that Claim 1, and Claim 6 depending therefrom, are now in condition for allowance, which is hereby respectfully requested.

Obviousness Rejection Under Schneider '066 Is Inept.

Applicant respectfully submits that Claims 10, 11 and 15 depends from Claim 1 which is distinguished from the prior art, including Schneider '066, as discussed above. Therefore, any dependent claim, including Claims 10, 11 and 15, are distinguished from the prior art. Further, the present invention is not obvious by Schneider '066, as there is no suggestion in Schneider '066 to modify and/or combine the references to create the Claim 1 structure of the present invention, and Schneider '066 fails to teach or suggest the structure of Claim 1; therefore the Examiner has failed to make a *prima facie* case of obviousness (MPEP 2142).

Further, the Examiner's comments at page 5 of the Final Office Action relative to the claimed diameter ratio, for example, are in error in that the present application as filed, at page 7, lines 11-15, specifically points out the critical nature of the these elements.

For all of the foregoing reasons, Applicant submits that Claim 1, and Claims 10, 11 and 15 depending therefrom, are now in condition for allowance, which is hereby respectfully requested.

For the foregoing reasons, Applicant submits that no combination of the cited references teaches, discloses or suggests the subject matter of the amended claims. The pending claims are therefore in condition for allowance, and Applicant respectfully requests withdrawal of all rejections and allowance of the claims.

In the event Applicant has overlooked the need for an extension of time, an additional extension of time, payment of fee, or additional payment of fee, Applicant hereby conditionally petitions therefor and authorizes that any charges be made to Deposit Account No. 20-0095, TAYLOR & AUST, P.C.

PATENT
Pre-Appeal Brief Request for Review
Group 3641

Should any question concerning any of the foregoing arise, the Examiners are invited to telephone the undersigned at (260) 897-3400.

Respectfully submitted,



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CERTIFICATE OF MAILING

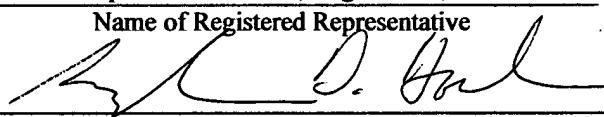
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MS Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: May 15, 2006.

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Signature

May 15, 2006

Date